UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/28/Add.1
17 June 1996

ENGLISH
Original: RUSSIAN

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1996

Addendum

GEORGIA

[4 June 1996]

CONTENTS

		Paragraphs	Page
I.	INFORMATION OF A GENERAL NATURE	1 - 31	2
II.	INFORMATION RELATING TO EACH ARTICLE OF PART I OF THE CONVENTION	32	7
	Articles 1 - 2	32 - 56	7
	Article 3	57 - 65	11
	Article 4	66 - 72	13
	Article 5	73 - 77	14
	Article 6	78 - 90	14
	Article 7	91 - 94	16
	Article 8	95 - 106	17
	Article 9	107 - 112	19
	Article 10	113 - 115	20
	Article 11	116 - 144	20
	Article 12	145 - 156	25
	Article 13	157 - 163	27
	Article 14	164 - 166	28
	Article 15	167 - 174	29
	Article 16	175	31
III.	CONCLUSIONS	176 - 179	31
	List of annexed documents		33

GE. 96-17543 (EXT)

I. INFORMATION OF A GENERAL NATURE

1. Georgia acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "The Convention") by decision of the Georgian Parliament No. 562 - Ic dated 22 September 1994. The Convention came into force for Georgia on 25 November 1994.

2. This report, reflecting compliance in the Republic with the requirements of the Convention, covers the period 1994-1995.

3. The preamble to the new Constitution of Georgia adopted by the Georgian Parliament on 24 August 1995 proclaims "the steadfast will ... to guarantee generally recognised human rights and freedoms". The second chapter of the Constitution (articles 12-47) is devoted to the fundamental rights and freedoms of citizens.

4. Article 17 of the fundamental law proclaims: "1. The honour and dignity of the individual are inviolable. 2. No individual may be subjected to torture, or to cruel or inhuman treatment or punishment". Article 18(4) states that "no physical or psychological coercion may be applied to an individual who is detained or whose liberty is restricted in some other way".

5. The Constitution of Georgia also contains other provisions in line with the requirements of the Convention. Those provisions will be fully reflected in the commentaries on each of the articles in the body of this report.

6. The Georgian Criminal Code and the Code on Criminal Procedure contain articles prohibiting torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as "torture"). The content of those articles will be set out in detail at the appropriate points in the report. Suffice it to mention here that the use of methods that may be characterized as "torture" is an aggravating circumstance for an offence of any nature (see the provisions of articles 106, 109. 110 and 113 of the Criminal Code).

7. The definition of the term "torture" to be found in the commentaries on the special section of the Criminal Code corresponds in part with the definition offered in the Convention (see the commentaries on articles 1 and 2 of the Convention in this report for greater detail on this matter).

8. Georgia has acceded to or ratified a range of international instruments concerning human rights that contain more comprehensive provisions than those envisaged by the Convention. On 25 January 1994 the Georgian Parliament adopted a decree on accession to the International Covenant on Civil and Political Rights (No. 399-Ic) and the International Covenant on Economic, Social and Cultural Rights (no. 400-Ic). These instruments came into force for the Republic on 3 August 1994. By decree No. 466-IIc of 21 April 1994 Georgia acceded to the Convention on the Rights of the Child, which came into force for the Republic on 2 July 1994. Georgia is also a State party to the Convention on the Elimination of all forms of Discrimination against Women (Decree No. 561-Ic of the Georgian Parliament dated 22 September 1994, which came into force for Georgia on 25 November 1994), to the Convention on the Treatment of Prisoners of

War (Decree of the Georgian Parliament dated 20 July 1993, which came into force for Georgia on 14 March 1994).

9. Under article 6 of the Constitution, "Georgian legislation shall conform to the generally accepted principles and norms of international law. International treaties or agreements of Georgia ... not at variance with the Constitution shall have predominant legal force relative to domestic enforceable enactments" (paragraph 2). Article 7 proclaims that "Georgia shall recognize and comply with generally accepted human rights and freedoms as a constant and supreme human value. In their exercise of power the people and the State shall be bound by these rights and freedoms as by a law directly in force".

10. Georgia is currently in course of transition to a market economy. The democratic reform process, one element of which is reform of the law, including the legal system, is in full swing in the country. The Constitution of the Republic has provided the basis for these transformations and determined the main lines to be followed (see chapter 5, "Judicial Authority", articles 82-91). In particular, provision is made for the establishment of what is a basically new institution for the country, namely a Constitutional Court invested with a wide range of powers (articles 83, 88, 89). The main task in the next stage is transformation of the legislation remaining from the Soviet period and the creation of a corpus of new laws in line with the requirements of the time. It will be during that stage that incorporation of the provisions of international human rights instruments, including those of the Convention, into domestic legislation will be completed.

11. As has been commented above, the first steps along that path have already been taken with the adoption of the new Constitution, which contains a chapter on fundamental human rights and freedoms, the content of which is generally in line with the norms and principles of international law. The Georgian Parliament has adopted laws governing and the generally recognised human rights and freedoms and guaranteeing their application in Georgia.

12. The following enforceable enactments ensure application of the provisions of the Convention in our country:

- Law on Georgian citizenship (adopted on 25 March 1993; amended on 27 July 1993);
- Law on the legal status of foreigners (3 July 1993);
- Law on the police (27 July 1993);
- Law on the procedure for the consideration of statements, complaints and petitions in governmental agencies, enterprises, institutions and organizations (irrespective of their organisational and legal form) (24 December 1993);
- Law on psychiatric care (1 May 1995)..

13. A decree being prepared for signing by the President of the Republic, E. Shevardnadze, "On urgent measures for the halting of torture and other cruel, inhuman or degrading treatment in places of detention on remand and for the serving of sentences" is intended to have a great effect on the carrying out of

the provisions of the Convention. The requirements set out in the draft of this instrument specify that:

(a) The provisions of the Convention must be brought to the notice of all officials whose duties bring them into contact with detained and arrested persons, so that "nobody should be an object or torture or of degrading treatment and punishment".

(b) The departments concerned must ensure that educational materials and information on the prevention of torture have been fully included in training programmes for the staff of law-enforcement agencies, both military and civil, and for medical personnel, public officials and other persons who may be involved to any extent with the holding and interrogation of prisoners and detainees.

(c) The Committee for Human Rights and Relations between Peoples is being asked to prepare a draft law, in conjunction with the Ministry of Justice, on the rehabilitation of victims of torture, with just and adequate compensation for them and, in the event of their death, for their dependents.

(d) The departments concerned are required to bring their internal regulations governing relation between prisoner and lawyer into line with the requirements of Georgian law and international conventions, and to provide the conditions in which persons under arrest may exercise their right of defence fully and without hindrance.

14. The draft presidential decree recommends that agencies at all levels should organize their activity in such a way as to ensure that information concerning torture should not be disregarded and left unassessed in the course of legal proceedings, and that evidence obtained under forms of pressure regarded as prohibited in the Convention should not be admitted. The draft decree makes the Committee for Human Rights and Rrelations between Peoples and the Ministry of Justice responsible for verification that the rights of detainees and arrested persons are observed in their places of detention, and for the holding of seminars for officials employed in the penitentiary system on matters relating to giving effect to the provisions of the Convention. (The full text of the draft decree is annexed).

Authorities with responsibility for implementation of the provisions of the Convention

15. Under the Constitution it is the Supreme Court that is responsible for procedural supervision of the administration of justice in the law courts of the Republic; it is also the court of first instance for cases specified by the law (article 90). Justice is meted out in Georgia by the law courts. The court system and practice are laid down by the law (article 88, paragraph 2). The setting up of courts-martial operating strictly within the system of the law courts is permitted in time of war (article 88, paragraph 3).

16. The conversion of the office of the Georgian prosecutor into a judicial body is a fundamentally new provision in the Constitution. The prosecutor's office carries out criminal prosecutions, supervises inquiries and the carrying out of punishments, and supports public prosecution. The powers, organisation

and procedure of the prosecutor's office are laid down in the organic law (article 91, paragraphs 1,3), which still awaits adoption.

17. In the structure of executive authority it is in the main the ministries of the interior, justice, health and defence that are responsible, along with other agencies, for giving effect to the provisions of the Convention.

18. The Committee for Human Rights and Relations between Peoples has special responsibilities in this sphere. Decree No. 385 of the Head of State, dated 4 October 1995, makes the aforesaid committee (ministry) responsible for coordination of the activity of official, public and other organizations in the sphere of protection of political, civil, economic, social and cultural rights in accordance with the provisions of international covenants and conventions. The Committee for Human Rights and Relations between Peoples is empowered to make written representations to the officials concerned, demanding the cessation of established breaches of human rights.

19. The aforesaid Committee is empowered, within its terms of reference, to obtain any information that it requires from the relevant official and governmental agencies, organizations and departments. (The text of the decree is annexed).

20. There is further evidence of the attention being paid by the leadership of the country to the sphere of human rights, as one of the foundations upon which a democratic society is based, in the insertion of articles in the draft of the country's new Constitution providing for the establishment of a Public Defender, an institution new in principle for Georgia. In accordance with the fundamental law, the Public Defender is responsible for monitoring the protection of human rights and freedoms in Georgian territory. The Public Defender has it within his power to disclose the facts of breaches of human rights and freedoms, and to inform organizations and individuals concerned of that fact. Moreover, it is a punishable offence to impede the activity of the Public Defender (article 43, paragraphs 1,2).

21. An important guarantee of the independence of the Public Defender chosen by the country's Parliament to serve for a period of five years is provided by the fact that expiry of the term of authority of the supreme legislative body that elected him does not bring activity in the post to a halt (the term of the present Parliament is set at four years).

22. The information on specific cases referred to in this report was supplied by the Georgian prosecutor's office, the ministries of the interior, justice and health, and also by the Committee for Human Rights and Relation between Peoples.

23. Under the legislation in force a private person who claims to be a victim of torture is entitled to complain to:

(a) the local police authority, which will if necessary look into the matter and carry out a preliminary investigation. Should the fact of torture be confirmed, the police authority concerned shall draw up an indictment and refer the case to court;

(b) the court, which will determine whether the fact of torture is the subject of a private prosecution, in which case it shall consider it and arrive

at the appropriate decision (article 11, part I of the Criminal Code). Should the case fall into the category of a joint private and public prosecution or a public prosecution, the court shall transfer the case to the competent agencies for inquiry and investigation (article 117, part I of the Criminal Code);

(c) the prosecutor's office, which shall, in the case of a private prosecution, initiate proceedings and hand over the case to the investigative agencies (article 115 of the Code of Criminal Procedure). Should the fact of torture be of a public nature (article 116, parts II and III of the Criminal Code), irrespective of whether or not the victim has complained, the investigative and inquiry agencies shall be obliged to draw up a criminal indictment and carry out the necessary investigative acts (article 3 of the Code of Criminal Procedure).

24. The competent body shall invariably arrange for a forensic report for the purpose of establishing the fact of bodily harm having been occasioned. Within no more than 10 days from the time of the declaration or communication one of the following decisions must be taken:

(a) to instigate criminal proceedings;

(b) to refuse to instigate criminal proceedings;

(c) to transfer the declaration or communication for investigation or jurisdiction.

25. The necessary measures must be taken concurrently to cease or interrupt the offence (article 110 of the Code of Criminal Procedure).

26. The Committee for Human Rights and Relations between Peoples shall, within its terms of reference, examine complaints of torture made by citizens. The appropriate powers have been conferred on the Committee by decree No. 335 of the Head of State, dated 4 October 1994. The draft presidential decree on urgent measures for the halting of torture and other cruel, inhuman or degrading treatment in places of detention (see above) instructs the Committee and the Ministry of Justice to prepare a draft law on the compensation and rehabilitation of victims of torture and, in the event of their death, of their dependents.

27. The Georgian authorities and the competent agencies are seriously concerned by the fact that instances of the use of torture continue to occur in places of detention on remand and for the serving of sentences. The law-enforcement agencies do not always ensure the prompt and impartial investigation of information on the use of torture and other degrading treatment, with the result that the guilty parties often remain unpunished.

28. Such a situation is largely due to the fact that the legal requirements concerning contact between lawyers and their clients are not being observed. Obstacles are placed in the way of access by lawyers to the Ministry of the Interior, the offices of the prosecutor and some other agencies under their control where inquiry and preliminary investigation are undertaken, and also to places of detention and imprisonment. For example, a system of passes and permits, for which there is no legal provision, has been established, and it is resulting in gross violations of the rights of arrested persons and detainees,

and is impeding the activity of lawyers. In the same way there are infringements of the document "Basic Principles on the Role of Lawyers" adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

29. In connection with the underdeveloped state of the legal system there are instances of citizens being unable to exercise their right to have their case dealt with without undue delay. In general, citizens are not sufficiently active in availing themselves of legal defence of their rights. This may be ascribed as being due to some extent to public ignorance of the law and to a decline in the authority of the judicial system in Georgia. Moreover, there is difficulty in instilling the conviction of the primacy of human rights and freedoms in the consciousness of the staff of agencies that apply the laws, in their interpretation and use of them.

30. The staff of the penitentiary system are in practice unaware of the existence of such an international document regulating the operation of this system as the Standard Minimum Rules for the Treatment of Prisoners. The actual situation in the penitentiaries of Georgia falls far short of the generally accepted international norms, although it does correspond in the main to the requirements of the Covenant on Civil and Political Rights, to which our Republic has acceded (for greater detail on this matter see the Georgian initial report on measures to give effect to the requirements of this Covenant submitted to the United Nations Committee on Human Rights).

31. We note with regret that the text of the Convention has still not been translated into the State (official) language of Georgia, which is making it difficult for the officials and government agencies responsible for the application of its requirements to be acquainted with it.

II. INFORMATION RELATING TO EACH ARTICLE OF PART I OF THE CONVENTION

Articles 1-2

32. In accordance with the requirements of these articles of the Convention, national legislation must contain a definition of the term "torture", and also a provision excluding the use of torture under any circumstances (including a state of emergency and a state of war).

33. Under the definition used in Georgian criminal law, torture means the systematic infliction of multiple injuries (beating, whipping, stabbing, slashing etc.) by means of blunt, pointed or cutting instruments, heat etc., that causes pain and anxiety to the victim (commentary on the special section of the Criminal Code).

34. As is evident from the foregoing commentary, the term "torture" is more narrowly interpreted in Georgian criminal law than its formulation in the text of the Convention. The explanation for this is that the Criminal Code of the Soviet period is still in force. Although Parliament has made considerable amendments and additions to it, the Code as a whole does not fully satisfy the requirements of international law and the human rights provisions adopted by the international community.

35. The Committee on Human Rights and Relations between Peoples has prepared and submitted proposals to the commission on legal reform set up in the Republic for the alignment of the interpretation of torture in domestic legislation with the definition proposed in the Convention, and for expansion of the relevant articles of the legal codes in the light of that provision.

36. Reform of the penal legislation of Georgia in accordance with the provisions of the Convention and other international documents on human rights as a whole will be carried out in stages, in the context of the legal reform.

37. It seems appropriate to point out that the Georgian legal system provides that such acts as battery (Criminal Code, article 116), abduction or other illegal deprivation of freedom (*ibid*, article 133), taking hostage (*ibid*, article 133[1]), criminal coercion (*ibid.*, article 135), threats (*ibid.*, article 136), exceeding of authority or powers of office (*ibid.*, article 187), illegal arrest or detention (*ibid.*, article 194), and forcing to give evidence (*ibid.*, article 195) are criminal offences; in that sense all acts of "torture" are seen as actions in breach of the provisions of Georgian criminal law.

38. The key principles by which the State is guided in seeking to prevent the possibility of torture being used are set out in the part of the new Georgian Constitution dealing with the obligations of individuals with special powers to detain or arrest. These obligations, governed by paragraphs 3, 4 and 6 of the fundamental law, include:

(a) a person in detention or otherwise deprived of liberty must be brought before a court within 48 hours at the latest. Should no decision on arrest or other restraint of liberty be taken by the court in the next 24 hours, the person concerned shall be freed forthwith;

(b) no physical or mental coercion shall be permitted to be used on a person who is detained or whose liberty is otherwise restricted;

(c) the period for which a person suspected of having committed a crime may be detained shall not exceed 72 hours, and the preliminary detention in custody of an accused person shall not exceed 9 months.

39. The Constitution also stipulates that the right of defence shall be guaranteed to every individual (article 42).

40. It must be pointed out that the effect of article 18 of the Constitution may be qualified in whole or in part by the President of Georgia in a state of emergency or of war. The President must submit the decision on this matter to Parliament for its approval within 48 hours of the decision having been taken (Constitution, article 46, paragraph 1).

41. Under article 122 of the Code of Criminal Procedure of the Georgian SSR, which remains in force with amendments and additions down to the present, the inquiring agency (the police, commanding officers of military units and heads of establishments, heads of correctional establishments, special investigative detention centres and State security agencies, and ships' captains on the high seas) must make a record of every case of the detention of a suspect, setting out the grounds for detention, the time and date of detention, and the responses of the accused, and must make a written report within 24 hours.

42. Until recently the Code of Criminal Procedure had an article 43 that was clearly of a discriminatory nature, under which the lawyer was admitted to the case from the time when the accused was notified of the completion of the preliminary investigation. A plenary session of the Georgian Supreme Court adopted a decree on this matter, as a result of which the article in question has been amended. Under the new wording of article 43, the lawyer is admitted to the case from the time of the bringing of the indictment. Should the suspect have been detained or subjected to preventive restriction taking the form of arrest before the bringing of the indictment, the lawyer is admitted to the case from the time when the record of detention is drawn up or the decision to apply preventive restriction is taken. In any event the holder of the inquiry, the investigator or the prosecutor must allow the suspect or accused person to have the services of a lawyer.

43. Rigorous compliance with this norm by the law-enforcement agencies of the Republic is constantly verified by the Committee for Human Rights and Relations between Peoples.

44. As noted above, a whole range of acts covered by the requirements of the Convention are treated as offences in the Criminal Code. We may single out article 116 of the Criminal Code ("Beating and torture"), under which "beating or any force as a result of which the sufferer has been caused pain" and "systematic beating or other force that is of the nature of torture" are treated as punishable criminal offences. Persons guilty of them are punished by corrective labour for a period of up to one year (part I), or by deprivation of liberty for a period of up to 3 years (part II).

45. Article 135 of the Criminal Code ("Coercion") makes provision, along with other punishment measures, for deprivation of liberty for a period of up to one year for the coercion of one person by another by force or by the threat of punishment to carry out or to abstain from carrying out various actions. The implementation of this article acquires special significance in the context of the provision of the Convention dealing with coercion as an aim of the use of torture.

46. Article 136 of the Criminal Code ("Threat"), which provides a punishment of corrective labour for up to one year for threatening to kill or cause serious bodily harm to an individual or persons close to him or her, should there be sufficient grounds to fear that the threat may be carried out, is also very important in this sense.

47. The nature of the punishment for other offences falling under the heading of "torture" as defined by the Convention is dealt with in the appropriate sections of this report.

48. Article 39 of the country's fundamental law specifically states that "The Constitution of Georgia does not negate other generally accepted human and civil rights, freedoms and guarantees that, while not referred to in it, flow directly from its principles". Consequently, it is only a question of time before Georgian legislation is brought fully into line with international legally safeguarding norms and principles.

49. There are some instances of the use of physical force against citizens by the personnel of law-enforcement agencies. Such happenings usually occur when

the individual is detained or under arrest, and occasionally during the period of the preliminary investigation with the aim of extracting confessions or information on third parties. Should facts of such a kind become publicly known, or should complaints be received from persons who have been harshly treated, the competent authorities must take the necessary measures against the guilty parties. In particular, the Committee for Human Rights and Relations between Peoples pays special attention to statements of such a nature. In a number of instances, the guilty parties have been proceeded against and punished or discipline, following a representation from the Committee.

50. Case No. 7493810 (known as the "Domukhovsky-Gelbakhiani trial"), in which a group of supporters (19 in all) of the ex-President of Georgia, Z. Gamsakhurdia, were accused of terrorist activity in which completely innocent persons became victims, has attracted great public interest in the Republic and elsewhere. According to communications from the international legal protection organization Helsinki Human Rights Watch, the persons accused in this trial were subjected to beating in the course of preventive restriction. The case had such repercussions that it was taken up by the Committee for Human Rights and Relations between Peoples, which appointed observers to monitor procedural norms in the course of the legal proceedings. On verification of the information given above it was established that there had been two instances of beating by a convict. Proceedings were initiated in connection with the complaint by G. Gelbakhiani. As a result, the convict guilty of beating Gelbakhiani was sentenced, and a prison worker responsible for keeping order was dismissed from the law-enforcement agencies. The court was unfortunately not able to establish that another prisoner, Z. Tsiklauri had been beaten. Nevertheless, given that there were serious grounds for assuming that beatings had in fact taken place, the Committee for Human Rights and Relations between Peoples is attempting to ensure that the case should be brought to its logical conclusion.

51. At the same time it should be commented that complaints of harsh treatment and the use of torture have not been substantiated in most instances and that, as in the case of the complaint of V. Domukhovsky, they have been used as a means of settling accounts with the authorities. That fact has also been noted by representatives of international organisations, especially by Mrs. N. Kharms, a member of the OSCE mission to Georgia (a letter from Mrs. Kharms to Ambassador Kubis is annexed).

52. Infringements of the rights of persons kept under guard and undergoing psychiatric examination are a cause of concern among the public and the legal watchdog organizations in Georgia. Despite the law on psychiatric care, article 12 of which prohibits the carrying out of forensic examinations by medical establishments under the control of administrative agencies, such examinations are still being carried out in the specialist medical establishment of the Ministry of the Interior. It ought, however, to be noted that lack of financial resources is the main reason for failure to comply with this legal provision.

53. The situation in Abkhazia. Since the Georgian central authorities lost *de facto* jurisdiction over the territory of the Abkhaz Autonomous Republic in 1993 as a result of the activities of the separatist forces and their myrmidons from abroad, the excesses of the separatists against the Georgian and non-Georgian population have continued. The fact that ethnic cleansing had been carried out in the region was acknowledged by the Budapest summit of the 52 member countries

of the OSCE. It was also noted that there had been mass use of torture, the victims of which have been and continue to be innocent old men, women and children. According to eye-witness accounts, facts of this kind were an almost daily happening both during and after the period of armed conflict in Abkhazia. Such methods have been widely used with the aim of intimidation not only by members of illegal Abkhazian armed units, but also by the so-called "Abkhazian militia", controlled and instigated by the local separatist administration.

54. The Georgian prosecutor's office has initiated criminal proceedings against the organizers and perpetrators of offences in Abkhazian territory. The factual information gathered in the course of the investigation provides proof of the crime of genocide in this region.

55. It has, however, been impossible for the reasons set out above for the prosecutor's office to conduct the necessary investigations in Abkhazian territory. In that connection, we deem it appropriate to raise the question with the United Nations Human Rights Committee of the establishment of a special mission to assist the Georgian prosecutor's office in carrying out the investigation, so that those guilty of crimes in Abkhazia should not escape responsibility, but should be brought before an international tribunal.

56. A report by the Georgian prosecutor's office on the results of its investigation on evidence of genocide and ethnic cleansing organized by the aggressive separatists in Abkhazia is annexed to this report.

Article 3

57. The country's new Constitution has laid the legislative basis for carrying out the requirements envisaged by this article of the Convention.

58. Thus, article 13 of the fundamental law prohibits the expulsion from Georgia of a citizen of the Republic (paragraph 3). The handing over of a Georgian citizen to another State is prohibited other than in instances for which there is provision in international agreements. An appeal may be lodged against the decision to hand over a citizen (paragraph 4).

59. The problem of persons legally resident in Georgian territory, but not Georgian citizens, is dealt with as follows in the Constitution (article 47):

(a) foreign citizens and stateless persons resident in Georgia have the same rights and obligations as citizens of the Republic, save for exceptions provided by the Constitution and the law (the reference is to some restrictions on political activity);

(b) in accordance with the generally accepted norms of international law, Georgia offers asylum to foreign citizens and stateless persons in a manner laid down by law;

(c) the handing over to another State of "refugees" (a term also taken to include persons granted asylum in Georgia), who are being persecuted for their political convictions, or in connection with acts not regarded as an offence in Georgia, is prohibited.

60. The provisions cited above supplement the law on citizenship, which provides, in particular, that foreign citizens and stateless persons are guaranteed the rights and freedoms envisaged by the norms of international law and Georgian legislation, including the right to seek protection for their personal, property and other rights by a court and other official agencies (article 8).

61. Georgian citizens have the right freely to enter and leave the Republic, while foreign citizens and stateless persons have the right freely to leave the country. Citizens and persons who are not citizens can freely choose their place of residence in Georgian territory (Constitution, article 22, paragraphs 1,2). Restrictions on these rights are possible only in accordance with the law, for the purpose of ensuring the State security or public safety essential to the existence of a democratic society, the protection of health, the prevention of crime or the rendering of justice (*ibid.*, paragraph 3). Under the law on the legal status of foreigners, citizens of other countries and stateless persons may not be granted asylum in Georgia if their activity is counter to the tasks and principles of the United Nations and the public interest of the country.

62. The country's fundamental law envisages the possibility of appeal against decisions on the above matters. In particular, the Georgian Constitutional Court is empowered, on the basis of a suit brought by a citizen, to examine the constitutionality of enforceable enactments with regard to the matters covered by the chapter of the fundamental law dealing with fundamental human rights and freedoms (Constitution, article 89, paragraph 1). An enforceable enactment or a part of it judged to be illegal shall cease to have the force of law, in which matter the decision of the Constitutional Court shall be final (*ibid.*, paragraph 2).

63. The Georgian legal system does not contain any norms prohibiting the extradition, expulsion and return of a specific individual if such a person faces the risk of being subjected to torture in the country to which he is returned. Provision to deal with this matter is being made in the course of the legal reform now being prepared. It should be noted that there has not been any recorded instance in Georgia of the extradition, expulsion or return of a person to another country in the period covered by the report.

64. The Georgian Criminal Code also makes provision for punishments taking the form of such sanctions as exile (article 26) and banishment (article 27) within the State territory. "Exile" is here understood as "expulsion of the condemned person from his place of permanent residence under the obligation to settle in a specified place"; and "banishment" is understood as "expulsion of the condemned person from his place of permanent residence under a prohibition against settling in certain places". Both punishment measures may be used as principal or additional sanctions (in the latter case the use of this measure is envisaged in circumstances specified by law) for a period of from 2 to 5 years. Exile may not be applied to any person less than 18 years old, to pregnant women or to women having children less than 8 years old dependent on them; banishment may not be applied to persons below the age of 18 years. The places, manner and conditions of exile and banishment are laid down by the legislation of the Republic. This punishment measure has not been used in recent years in the legal practice of the country.

65. As regards matters of extradition, they are solved in Georgia on the basis of bilateral agreements between States. Information on this question is to be found in this report, in the commentary on article 8 of the Convention.

Article 4

66. The Georgian Criminal Code contains a chapter "Offences against the life, health, liberty and dignity of the individual", which provides punishment measures for such acts of a criminal nature as assault and battery and torture (article 116); kidnapping or other illegal deprivation of liberty (article 133); hostage taking (article 133[1]); coercion (article 135); and threats (article 136). Exceeding of authority or of office are also criminal offences under the Code (article 187), as is illegal arrest or detention (article 194) and coercion to give evidence (article 195). The content of some of these articles is examined in detail in this report - in the commentaries on articles 1 and 2 of the Convention. Here we would merely emphasize that a penalty is invariably provided for the perpetration of the above-mentioned offences.

67. It should be noted that no distinction is drawn in Georgian legislation between such offences as torture and the attempted use of torture, and also an order to use torture coming from an individual in authority. The Criminal Code does, however, contain an article 17 "Liability for the commissioning and attempted commissioning of a crime" which stipulates that "any premeditated act directly aimed at the commissioning of a crime shall be regarded as an attempted crime, notwithstanding that the crime may not have been carried out for reasons not dependent on the guilty party". Criminal liability arises for any act of such a nature in the same way as for a crime carried out. Moreover, the court, in deciding on the punishment, shall have regard to the nature of the crime committed and the extent of the public danger, the extent to which the criminal intent was carried out and the reasons for which the crime was not carried through (*ibid.*). In general, it should be noted that the punishment for an attempted crime is not much less in Georgian legal practice than that for a crime that has been carried out.

68. Under article 19 of the Criminal Code ("Complicity"), a person (referred to in the Code as an "organizer") who organizes or arranges the commissioning of a crime is regarded as an accomplice to the crime, equally with the perpetrator. "Instigators" - persons who incite another person to commit a crime, and "abetters" - persons who assist the carrying out of a crime by giving advice, supplying information etc., are also regarded as accomplices to the crime.

69. It must be stressed that a crime committed by a group of people is, as a rule, more severely punished under Georgian legislation than one committed by an individual acting in isolation. When deciding on the punishment the court must have regard to the extent and nature of the participation of each of the accomplices in the carrying out of the crime (Criminal Code, article 19).

70. An individual who carries out a clearly illegal order or other instruction has general criminal liability (article 16[1] of the Criminal Code).

71. The Criminal Code also provides measures of criminal or administrative punishment for such an offence as the exceeding of authority or of office, defined as "the premeditated carrying out by an official of an act that clearly

exceeds the rights and powers legally conferred upon him, should so doing have caused appreciable harm ... to the rights and legal interests of individual citizens". The same act, if systematically carried out, or should it have occasioned especially severe consequences, shall be punishable by deprivation of liberty for a period of up to five years. The exceeding of authority, if accompanied by the use of force or the use of a weapon, or an act that is degrading to the sufferer, shall be punishable by deprivation of liberty for from two to eight years (Criminal Code, article 187).

72. On the premise that torture is regarded as a criminally punishable act under Georgian law, it is obvious that criminal liability arises in all cases of the use or attempted use of torture, or of ordering torture to be applied, both for the initiators of the order and for those who carry it out.

Article 5

73. The measures taken by the State to establish its jurisdiction concerning facts of the use of torture as defined in article 4 of the Convention are adequately reflected in Georgian legislation.

74. The country's Criminal Code stipulates that any person who has committed a crime in Georgian territory shall be liable under the Code. The liability of the diplomatic representatives of foreign States and of those citizens who, in accordance with existing laws and international agreements cannot be tried by Georgian courts in criminal cases, is a matter that is dealt with through diplomatic channels (article 5).

75. Georgian citizens, and also foreigners and stateless persons permanently resident in the Republic, who have committed crimes outside Georgia, shall be liable under this Code should a criminal prosecution be in course against them or should criminal proceedings be brought against them in Georgian territory and should they not have been punished by the verdict of a foreign State (*ibid.*, article 6, part I).

76. Foreign nationals, and also stateless persons, not permanently resident in Georgia, shall be liable under the Criminal Code for crimes committed outside Georgia only in those instances for which provision is made in international law and if proceedings have been initiated against them in Georgia (*ibid.*, article 6, part II).

77. It follows from the foregoing that acts of torture are considered by Georgian legislation to be universal crimes, irrespective of the nationality of the guilty party and/or the victim, and that they inevitably entail criminal liability.

Article 6

78. Georgian legislation does not have any special custody procedure for an individual who has committed acts of torture. Under the legislation in force, the same procedures are applied to individuals in this category as are provided for the carrying out of criminal offences of any kind.

79. Under article 18 of the Georgian Constitution, detention may be carried out only by a person specially empowered for that purpose and in those cases for which there is legal provision (paragraph 3).

80. Immediately after having been detained, a detained or arrested person must be informed of his rights and of the grounds for detention. Immediately after detention or arrest the individual is entitled to request the services of a defence lawyer, and that request must be met (paragraph 5).

81. The provisions of the existing Code of Criminal Procedure stipulate that an individual suspected of having committed a crime punishable by deprivation of liberty may be detained only on one of the following grounds:

(a) when the individual concerned was caught in or immediately after the act;

(b) when eye-witnesses, including the victims, directly identify the given individual as the perpetrator;

(c) when clear traces of the crime are found on the suspect or his clothing, in his proximity or in his dwelling.

82. When there are other grounds for suspecting an individual of having committed a crime, that individual may be detained only if he was taken in flight, or when his identity has not been established, or if he has no fixed abode.

83. A person detained on suspicion of having committed a crime is entitled to complain against the actions of the person conducting the investigation, to submit evidence, give explanations and present petitions (article 121).

84. In accordance with the decrees of the Presidium of the Supreme Soviet of the Georgian SSR dated 27 April 1977 and 6 April 1984, the procedure for the short-term detention of suspects is governed by the Regulations on the short-term detention of persons suspected of having committed a crime (Code of Criminal Procedure, article 122[1]).

85. As regards the constitutional guarantees for a detainee that the period of detention shall not exceed the time needed for the initiation of criminal proceedings or other procedural acts, they are to be found in paragraphs 3 and 6 of article 18 of the Georgian Constitution (see the commentaries on articles 1 and 2 of the Convention for greater detail).

86. The detention and questioning of persons suspected of having committed a crime is, in accordance with article 118 of the Code of Criminal Procedure, the responsibility of the inquiring agencies, the functions of which are carried out by:

(a) the police;

(b) the commanders of military units and the officers in charge of military establishments - in cases concerning crimes committed by military personnel under their command, as well as crimes committed by members of the armed forces in connection with the carrying out of their duties;

(c) the officers-in-charge of corrective labour establishments and special investigative prisons - in cases concerning crimes against the established order of conduct of the service committed by staff members of these institutions;

(d) ships' captains on the high seas, etc.

87. It should be noted that the prosecutor is informed without delay of a detected crime and the start of an investigation, including the detention of one or more persons (article 118). The prosecutor is obliged to release without delay any person who is being detained for longer than the legally established period (article 10 of the Code of Criminal Procedure).

88. As regards persons who are not Georgian citizens, the law on the legal status of foreigners (adopted on 3 July 1993) guarantees foreign nationals protection of the person and non-interference in their life (article 17). This law also governs the principles of the liability of foreigners for crimes, and administrative and other offences as laid down by Georgian legislation unless "provided to the contrary by international agreements".

89. The law additionally contains the provision that a foreigner may be deported from Georgia should there be a threat to the health, rights and legal interests of citizens of the Republic (article 29, paragraph (e)).

90. During the period covered by the report, no appeals were made to government agencies having a bearing on this article as it affects foreign nationals and stateless persons.

Article 7

91. As already noted above in the commentary on article 5 of the Convention, Georgian legislation stipulates that any person who has committed a crime in the country's territory shall be liable under the Criminal Code on an equal footing with Georgian citizens. The only exceptions to this are the diplomatic representatives of foreign States and that category of citizens who cannot be tried by the courts of the Republic in criminal cases. Should a person in this category commit a crime, the question of his liability shall be resolved through diplomatic channels (article 5 of the Criminal Code). A similar situation is also governed by the Code of Criminal Procedure, which specifically states that the rules of the present Code shall be applied in the prosecution of criminal cases concerning crimes committed by foreigners, and that the only limitations in that context apply to holders of diplomatic immunity (see article 22).

92. Guarantees of adequate court examination and fair treatment for persons accused of having carried out torture (equally with any other criminal offence) are also contained in the Code of Criminal Procedure. In particular, it is stipulated in the Code that:

(a) when there are sufficient grounds for the bringing of a criminal indictment, the investigator shall submit a motivated resolution for bringing the person concerned before a court as the accused (article 140);

(b) The charge must be brought no later than 48 hours from the time of submission of the resolution and the accusation (article 145);

(c) should the suspect, the accused and other persons involved in the criminal proceedings not have a command of the language in which the proceedings are conducted, the services of a translator shall be offered (article 135);

(d) The investigator shall be obliged to examine the accused without delay after the accusation has been brought (article 147).

93. The accused shall invariable be given the right of defence (article 18-3 of the Constitution and article 17 of the Code of Criminal Procedure). Under the previously cited article 43 of the Georgian Code of Criminal Procedure, the defence lawyer shall be admitted to the case from the time when the charge is brought. The person holding the inquiry, the investigator or the prosecutor are obliged to provide the suspect or the accused with the services of a lawyer. If so determined by the court or by decision of the judge, "close relatives", legal representatives of the accused, and also other persons not professional lawyers may be permitted as the defence counsel. (*ibid.*).

94. Under article 85 (paragraph 1) of the country's Constitution, the court considers the case in open session and the decision of the court is publicly announced. Legal proceedings are based on the equality and contention of the parties (*ibid.*, article 85, paragraph 3). This provision is a guarantee of fair and impartial proceedings.

Article 8

95. Questions of extradition are governed in Georgia by the provisions of bilateral international agreements on mutual legal assistance. In the light of the requirements of the present article of the Convention, we may instance as the most typical the agreement concluded with the Russian Federation by Georgia.

96. The special "Extradition" section of the Georgian-Russian treaty on legal assistance and legal relations in civil, family and criminal cases (signed on 15 September 1995, awaiting ratification by the parliaments of both States) stipulates as follows:

(a) the contracting parties undertake, on request, to hand over one to the other persons in their territory for the purpose of prosecution or the serving of a sentence;

(b) extradition shall be carried out in connection with acts punishable under the legislation of both parties, and for which provision is made for punishment in the form of deprivation of freedom for a period of more than one year, or some other heavy punishment. Handing over for the purpose of serving a sentence shall be carried out if the person has been sentenced to deprivation of liberty for a period of six months or more (article 61).

97. Extradition shall not be carried out if:

(a) the person concerning whom the request for handing over is made is a citizen of the party to the treaty to which the request is made, or has the right of asylum in the given State;

(b) in accordance with the legislation of both parties to the treaty the criminal prosecution shall take the form of a private prosecution;

(c) on receipt of a request under the legislation of the party to the treaty to which the request is made, criminal proceedings cannot be initiated or

a sentence cannot be carried out in connection with the expiry of the statute of limitations or on some other legal grounds;

(d) in relation to the person whose extradition has been requested, a sentence has already been served for the same offence in the territory of the side to which the request has been made or legal effect has been given to a decision to halt proceedings.

98. Extradition may be refused if the offence in connection with which such a request has been made was committed in the territory of the party to the treaty to which the request was made (*ibid.*, article 62).

99. If criminal proceedings have been initiated against the person to be extradited or if a sentence is being served for another crime in the territory of the party to the treaty to which the request has been made, extradition may be delayed until the proceedings are over, the sentence has been served or the person has been released on some other legal grounds (*ibid.*, article 63).

100. Should the deferment of extradition result in expiration of the statute of limitations on the criminal offence or complicate investigation of the offence, temporary extradition may be effected following receipt of an application setting out the grounds, on condition that the person extradited be returned without delay on conclusion of the proceedings for which extradition was granted, and no later than three months after the date of extradition (*ibid.*, article 64).

101. Should requests for the extradition of the same person be received from several States, the question of which request shall be granted shall be decided by the party to the treaty to which the requests were made (*ibid.*, article 65).

102. It should be noted that, under the provisions of article 66, paragraph 1 of the Georgian-Russian treaty to which reference has been made, a person extradited may not be proceeded against or punished in connection with any other offence than the one that provided the grounds for extradition without the consent of the contracting party to which the request was made.

103. The treaty on legal assistance and legal relations between Georgia and the Russian Federation also governs such legal procedures as the extradition application (article 67), taking into custody for extradition (article 68), taking into custody awaiting receipt of an extradition application (article 70), the carrying out of extradition (article 71) and repeated extradition (article 72).

104. The only grounds upon which legal assistance may be refused are that so to do "may be prejudicial to the sovereignty or security or be in contradiction with the basic principles of the legislation of the contracting party to which the request is made" (article 18).

105. Articles having a similar content also feature in the treaty between Georgia and Ukraine. Several agreements have also been prepared on legal assistance between Georgia and CIS countries. According to information from the ministries of justice and foreign affairs involved in the drafting of these documents, all of them coincide over regulation of the question of extradition. The only differences are in technical details.

106. With regard to treaties of this kind concluded with foreign countries other than republics of the former USSR, Georgia has signed a document on legal assistance in criminal cases with the Republic of Bulgaria. Article 1 of that treaty makes provision, in particular, for the extradition of detainees. There is, however, the qualification that cooperation under the treaty does not include "the handing over of a person and arrest of a person for the purpose of handing over" (article 1, paragraph 3a). Under the terms of the treaty, one reason for refusing legal assistance is that the side to which the request is made has grounds for considering that the course and outcome of the legal proceedings may be adversely affected by "race, religion, sex, nationality, language, political convictions, and personal and public standing" (article 3, paragraph 1b). Legal assistance may be refused in the cases covered by the European Convention on the Transfer of Sentenced Persons and the European Convention on Co-operation in Criminal Matters (*ibid.*, paragraph 1e).

Article 9

107. According to information supplied by the Georgian Ministry of Justice, the following international agreements coming under the terms of this article of the Convention were drawn up in the period covered by the report:

(a) a treaty between Georgia and Ukraine on legal assistance and legal relations in civil and criminal cases. Signed on 13 April 1993, awaiting ratification;

(b) a treaty between Georgia and the Republic of Bulgaria on legal assistance in criminal cases. Signed on 19 January 1995, in force.

(c) a treaty between Georgia and the Russian Federation on legal assistance and legal relations in civil, family and criminal cases. Signed on 15 September 1995, awaiting ratification.

108. Bilateral agreements on legal matters have been initialled with Azerbaijan, Kazakhstan and Moldova. Agreements with Armenia, Greece and Turkey are in the drafting stage.

109. In connection with the fact that only one of the above-mentioned documents has come into force, there have not been any recorded instances of reciprocal legal assistance in cases having a bearing on the provisions of the Convention or in other cases.

110. More rapid ratification of the treaties on legal matters in the parliaments of States parties will undoubtedly play a positive part in fulfilment of the obligations that Georgia has undertaken within the framework of the Convention. The Georgian-Bulgarian treaty, the only one to have come into force, provides, in particular, for the following forms of legal assistance in criminal matters: investigation and identification of persons; interrogation of suspects, accused persons and defendants; interrogation of witnesses and experts; the sending of objects and documents; extradition of detainees; information concerning verdicts and exchange of normative documents etc. (section I, article 1). It follows from the foregoing that, since torture is a general criminal offence, it falls within the scope of the legislation of both States parties to the treaty and is, consequently, a subject of this document (article 2).

111. This matter is resolved in a similar manner in the Georgian-Russian and Georgian-Ukrainian agreements. In addition, the States parties to these agreements accept the following obligation: each will, at the request of the other contracting party, initiate criminal proceedings under its own criminal legislation against its own citizens suspected of having committed offences in the territory of the other contracting State (respectively articles 46 and 59 of the Ukrainian-Georgian and the Russian-Georgian treaties).

112. While this report was being prepared Georgia signed a further two treaties on mutual assistance: with Azerbaijan on 8 March 1996, and with Turkey on 4 April 1996.

Article 10

113. Up until the time when this report was being prepared there were not any specific programmes for the training and instruction of law enforcement personnel, military or civil, and of medical personnel, public officials and other persons for the purpose of excluding the very possibility of torture. The responsibility for detecting the fact of bodily harm caused, in particular, by torture lies with forensic medical examination. However, the task of such examination is to establish the fact of bodily harm, and its severity, but not its origin. (Code of Criminal Procedure, article 71).

114. The draft Presidential decree on urgent measures for the halting of torture etc. in places of detention on remand and for the serving of sentences is called upon to remedy the deficiency that exists in this case; its second paragraph makes the Ministry of Education responsible, along with the Committee for Human Rights and Relations between Peoples, the prosecutor's offices, the ministries of the interior, justice and health, the State security service, and the department of frontier troops, for "the full inclusion of instructional materials and information on the prevention of torture" in training programmes for the above-mentioned personnel. The Committee for Human Rights and Relations between Peoples has already prepared recommendations on this matter and circulated them to the ministries and departments concerned.

115. Assistance from international institutions and organizations could play a very significant part in the successful solution of the problems that flow from the provisions of this article of the Convention. The Committee for Human Rights and Relations between Peoples has drafted proposals on cooperation and circulated them to the Office of the OSCE for democratic institutions and human rights; these recommendations include, in particular, an invitation for international experts to visit the country to study the situation in this sphere, to give practical assistance and to hold seminars.

Article 11

116. During the period covered by the report, before the adoption of the country's new Constitution, the prosecutor was responsible for verifying compliance with the law by the inquiring and preliminary investigation agencies. The verification procedures are governed by the Georgian Code of Criminal Procedure. There follows an account of those of its provisions that relate to the requirements of this article of the Convention, with an indication of the article of the Code.

117. The prosecutor is empowered, within the limits of his jurisdiction:

(a) to require the inquiring and preliminary investigation agencies to submit for verification criminal cases, documents, materials and other information on the course of the inquiry, preliminary investigation and determination of offenders;

(b) to cancel illegal and unfounded resolutions of investigators and inquiring officers;

(c) to give written instructions on the investigation of an offence, on the choice, rejection or modification of the measure of preventive restriction, and the conduct of individual investigative acts;

(d) to instruct the inquiring agencies to comply with the edicts on detention, taking into custody and holding in custody; to participate in the carrying out of the inquiry and preliminary investigation and, where necessary, personally to carry out individual investigative acts or fully to follow a given case;

(e) to extend the term of the investigation and holding in custody as a preventive restriction in those cases and in the manner laid down by the Code of Criminal Procedure;

(f) to dismiss the person carrying out the inquiry or the investigator from the further conduct of the inquiry or preliminary investigation should they have been guilty of a breach of the law in the investigation of the case (see article 211).

118. The Georgian prosecutor's office has a special body - the Board for the Monitoring of Inquiries and Human Rights in agencies of the Ministry of the Interior.

119. It follows from the foregoing that the prosecutor was all-powerful in the State law-enforcement system during the period covered by the report. Until recently the prosecutor even had the right to monitor the activity of the judiciary. He was correspondingly also responsible for the supervision of places of imprisonment and for the treatment of prisoners and detainees. Article 22 of the Criminal Code - "The purposes of punishment" - is the legal norm that regulates this question unambiguously. It notes, in particular: "The purpose of punishment is not to cause physical suffering or to be degrading". Having regard to the fact that the article refers to condemned persons, i.e. persons who have committed a crime, this norm is undoubtedly also applicable to persons whose freedom is being restricted temporarily. The need for humane treatment of persons in this category is, however, not always complied with by the personnel of law-enforcement agencies. In accordance with the provisions of the special section of the Code of Criminal Procedure (articles 80-94), persons in custody may be held in places of temporary detention for no longer than 3 days. Detention in custody during the investigation of a case must not last for more than two months, except in specially stipulated cases.

120. The Committee for Human Rights and Relations between Peoples usually reacts quite effectively to any infringements in this respect. We may take as an example the case of the detainees Mikadze and Kandaria, who were held in the

special investigation unit in Tbilisi without charge for approximately two years. Both detainees were released following intervention by the Committee.

121. With regard to the actual conditions in places of preliminary confinement, the situation may be characterized as grave. The administrations of these institutions, which include the special interrogation units in Tbilisi, Kutaisi, Zugdidi and Batumi, are guided in their activity by the outdated provisions on preliminary close confinement, which are already more than 25 years old. Instead of the 2.5 square metres laid down, the average space per arrestee in them is less than one square metre. As a rule the detainees do not have sleeping quarters and appurtenances, and are often obliged, because of lack of space, to sleep in 2-3 shifts. Conditions conducive to the development of parasitic and infectious diseases are thus created. There is particular alarm over the fact that juvenile detainees are kept under the same conditions.

122. Apart from the prosecutor's office, there is also a specialist body in the Georgian Ministry of the Interior with the power to inspect places of detention - the Central Office for the Serving of Sentences. Through his decrees the Head of State has also conferred the right to observe the situation in the penitentiary system on the Committee for Human Rights and Relations between Peoples (Decree No. 335) and the International Committee of the Red Cross (Decree No. 33) (texts annexed). Representatives of the aforesaid Committee and of the Red Cross make full use of the right conferred upon them, regularly visiting places of confinement and meeting the prisoners and detainees. Through collaboration with the Ministry of the Interior the Committee for Human Rights and Relations between Peoples takes all necessary steps to create normal conditions for the keeping and handling of persons whose liberty is restricted, ruling out cruel and degrading treatment.

123. Evidence of the aspiration of the Georgian leadership to create an open and democratic society in the country is provided by the fact that representatives of the accredited diplomatic corps in Georgia are allowed to visit prisoners in whom they are interested on submission of an appropriate request and statement of their wishes.

124. The Code of Criminal Procedure also governs appeal against the actions of the inquiring agent, the investigator and the prosecutor (articles 219-221). The complaints procedure under the Code is as follows:

(a) complaints against the actions of an inquiring agent or investigator are made to the prosecutor directly or through the person conducting the inquiry or through the investigator whose action is the subject of the complaint. Should the complaint be made orally, it is written down in a statement which is signed by the complainant and by the person receiving the complaint;

(b) the inquirer and the investigator are obliged to forward the complaint along with the comments to the prosecutor within 24 hours (article 219). The lodging of a complaint shall not, until such time as it has been dealt with, halt the application of the action complained against, if that is deemed unnecessary by the inquirer, the investigator or the prosecutor (*ibid.*).

125. The prosecutor is obliged to deal with the complaint within three days of its receipt and to inform the complaint of the outcome or, should the complaint be rejected, to set out the grounds on which it has been deemed to be unfounded.

126. An appeal may be lodged against the decision of the prosecutor concerning the complaint, both by the person whose actions are being complained against and by the person who brought the complaint. Complaints against the conduct of the prosecutor in his handling of the preliminary investigation or investigative acts are forwarded to his immediate superior (Code of Criminal Procedure, articles 220-221).

127. Under the country's new Constitution the powers of the prosecutor's office (which, moreover, becomes a "judicial institution") are considerably restricted; there is a concurrent appreciable increase in the role of the court and a broadening of its functions (see the section of this report on "Authorities with responsibility for implementation of the provisions of the Convention").

Rights and guarantees for persons deprived of liberty

128. The rights and guarantees for persons in this category are governed by the Georgian Code of Criminal Procedure. It should, however, be noted that, following the adoption of the Constitution, this Code will be the object of serious reworking with the object of bringing it into line with the provisions of the fundamental law. Another important point is that the draft of a document of such importance in the light of the requirements of this Convention as the Georgian Punishment Code will already be in existence at the time of the creation of this document. The aforementioned draft has been sent to the departments concerned for submission of their conclusions.

129. The most important provisions of the existing Code of Criminal Procedure are given below, with an indication of the article.

130. No one may be arrested other than on the basis of a judicial decision or with the sanction of a prosecutor, who shall be obliged immediately to release any person illegally deprived of liberty or kept in detention for longer than the period specified by the law or sentence (article 10).

131. Holding in custody as a preventive measure is applied in compliance with the requirements of article 10 (see above) and the Regulations on preliminary custody for cases concerning offences, for which the law provides for a punishment taking the form of deprivation of liberty for a period of more than one year. In exceptional circumstances this measure may be applied in cases involving offences for which the legal penalty is imprisonment for up to one year, solely on the grounds of the dangerous nature of the offence (article 88). Detention in custody may not last for more than three days, and not more than two months in investigation of the case. The period of detention in custody in the course of examination may be extended only by virtue of the particular complexity of the case to a maximum of nine months (article 88^1, 89). This period may, in exceptional circumstances, be extended even further than nine months, on grounds of exceptional circumstances of the case and only by the Attorney-General of the Republic.

132. One positive step in connection with the requirements of the Convention is the inclusion in the Georgian Constitution of norms under which the duration of

preliminary detention may not exceed nine months under any circumstances (article 18, paragraph 6).

133. Arrest and holding in custody as a measure of preventive restriction may be applied to juveniles only exceptionally, when so required by the seriousness of the crime (article 81[1] of the Code of Criminal Procedure).

134. Special guarantees are provided for persons against whom a verdict of guilty has been pronounced.

135. Under the provisions of the Code of Criminal Procedure, time spent in a medical establishment is taken into consideration when calculating the sentence served (article 336), and especially also if the need for observation under in-patient conditions arises in forensic medical or psychiatric examination (article 190).

136. A convict is informed of all objections and complaints made concerning his case, and takes part in the consideration of an appeal (articles 339, 342, 389). The lodging of an appeal or objection against a guilty verdict halts the application of that verdict (article 342). In considering an appeal the court may lighten the punishment imposed by the court of first instance or apply the law on a less serious offence, but is not entitled to increase the punishment or to apply the law on a more serious offence (article 361).

137. Before giving effect to the sentence the court is oblige to give the close relatives and spouse of the convicted person in custody the opportunity of a meeting with him. After a verdict in which the condemned person is sentenced to deprivation of liberty comes into force, the administration of the place of imprisonment is obliged to notify the spouse or close relative where the convicted person has been sent to serve the sentence (article 371).

138. The serving of a sentence of imprisonment may be postponed on one of the following grounds:

- serious illness of the convicted person that is an impediment to the serving of the sentence - until after recovery;

- the pregnancy of a convicted woman up to the time of the serving of the sentence - for a period not exceeding one year;

- should a convicted woman have small children - until such time as the child is three years old;

- under certain exceptional circumstances for which legal provision has been made - for a period to be determined by the court, but not exceeding three months (article 373).

139. Convicted persons who become so seriously ill while serving their sentence that continuing to serve the sentence is prevented may be freed from continued serving of the sentence by decision of the court (article 374).

140. Despite the fact that the requirements of the law are, as a rule, observed in the country's penitentiary system, the actual position in the penal establishments of Georgia falls far short of the generally accepted

international norms. The general and most significant defects of the penitentiary system, which comprises, *inter alia*, 15 corrective labour colonies, prisons and special investigation units, include:

(a) the critical condition of the facilities of the system - total depreciation of buildings that have been in use for many years, and that cannot be repaired for lack of resources;

(b) the totally unsatisfactory level of medical services, also due to lack of resources for their normal organization. As a consequence of this, 120 persons died in places of imprisonment in 1994 from various diseases (mainly tuberculosis and cardiovascular conditions). The number of deaths from illness in 1995 was 122.

141. The extent of the financing needed by the system is indicated by the following fact - the amount needed for 150 prisoners suffering from tuberculosis and therefore kept in the special colony in Ksani to be given adequate treatment is the equivalent of 20-25,000 US dollars. The Republic's Ministry of the Interior does not have such resources at its disposal.

142. A similar situation exists in the specialized corrective establishments for women and children, and in treatment establishments. The almost total absence of elementary living conditions and the unsatisfactory sanitary state may be regarded as a common problem of the penitentiary system.

143. To sum up, the conditions under which convicts are kept in penal establishments may be characterized as degrading. On 1 January 1996 there were some 8,247 persons in the establishments of the penitentiary system, including roughly 200 women and juveniles below the age of 18 years.

144. The State is taking measures to rectify the situation insofar as possible. An important step in this matter has been a decree of the Cabinet of Ministers, drafted on the instructions of the Head of State, "On measures for the provisions of materials and machinery, accommodation and finance to the penal establishments of the Ministry of the Interior".

Article 12

145. Under the Georgian Code of Criminal Procedure, a preliminary investigation is carried out in all criminal cases, except for the offences set out in article 126 of the Code, which fall into the category of cases for which a preliminary investigation is carried out only if the need for it is recognized by the court or the prosecutor.

146. The preliminary investigation for cases in which there is a suspicion of torture is carried out by the investigative agencies of the prosecutor's office, and also by agencies of the Ministry of the Interior. For cases concerning the offences covered by article 199 of the Criminal Code ("Coercion of a witness or expert"), the preliminary investigation is conducted by the agency responsible for investigation of the offence concerning which the criminal proceedings are initiated (Code of Criminal Procedure, articles 125, 126).

147. The preliminary investigation is not conducted until criminal proceedings have been initiated. An investigator who has received information on a crime

committed in the area of his activity that needs a preliminary investigation is obliged to initiate criminal proceedings without delay and to proceed with the investigation, having drawn up the appropriate decision, a copy of which he sends to the prosecutor within 24 hours.

148. Should criminal proceedings be initiated by the investigator himself, he draws up a single decision covering the initiating of criminal proceedings and acceptance for carrying them out by himself.

149. Should a case be complex or large, its investigation may be entrusted to several investigators, one of whom accepts the conduct of the case and directs the activities of the other investigators. In this case, the names of all the investigators shall be given to the suspect, the accused or the victim when the right of challenge is explained.

150. The preliminary investigation starts from the time of initiation of the criminal case and is completed within a period of no more than two months. The right of extension in the instances for which provision is made in the Code belongs to the agencies of the prosecutor's office (article 133 and 134 of the Code of Criminal Procedure)

151. The data of the preliminary investigation may be made known only with the permission of the investigator and the prosecutor (article 139 of the Code of Criminal Procedure).

152. The Code of Criminal Procedure also provides for and governs such procedures as:

- the bringing of the indictment and interrogation of the accused (articles 140-152);

- the questioning of witnesses and victims (articles 153-159);

- confrontation for the purpose of identification (articles 160-164);

- official examination - for the purpose of detecting traces of the crime on the person of an accused, suspect, witness or victim, if so doing does not require forensic medical examination (articles 181, 182);

- the making of expert assessments, (articles 184-185).

153. After the accused in the case and his defence lawyer have been acquainted with the materials of the examination, should there be sufficient grounds for bringing the accused before a court, the investigator prepares an indictment and sends it with the file to the prosecutor (articles 206 and 208 of the Code of Criminal Procedure). In the opposite case the criminal proceedings are terminated, to which end the investigator draws up a motivated resolution (article 209 of the Code of Criminal Procedure).

154. In 1995 criminal proceedings were initiated in Georgia in 7 cases of the use of torture (data of the Office of the Attorney-General of the Republic). For example, there was widespread interest in the country in the case of the murder of L. Chovelidze - the mother of T. Chovelidze, killed in the course of

the events of 9 April 1989. In the course of investigation of the murder by the deputy head of one of the offices of the Internal Affairs Administration of Tbilisi, G. Kavtelishvili, and his colleague, G. Kikacheishvili, members of the Khidasheli family were illegally detained with the aim of obtaining confessions from them, and measures of coercion falling within the definition of torture were applied to them. The victims were released from custody for lack of proof of guilt, and proceedings were brought against Kavtelishvili and Kikacheishvili under article 109 ("Bringing to suicide") and articles 187 and 195 of the Criminal Code.

155. It should be noted that it is not always possible to bring to account a person suspected of having used torture. The reason for this should, obviously, be sought in the lack of belief on the part of victims in the inevitability of punishment and fear of possible revenge by the accused. That is, in its turn, a consequence of the decline in the authority of the law-enforcement agencies in society and the imperfections of the machinery of judicial protection.

156. The case of Mr. Tsanava, who was arrested on a charge of robbery without adequate proof, may be taken as an example. While in detention he was tortured to extract a confession. On receiving information about this, the Committee for Human Rights and Relations between Peoples visited Tsanava in prison and verified that he had been subjected to beating and torture. It was, however, impossible to bring to account the person responsible for those acts because the victim "could not remember" who precisely had treated him in that way. Tsanava was released from custody and given treatment. The Committee for Human Rights and Relations between Peoples has taken up this case and is continuing to pursue it.

Article 13

157. Georgian legislation recognizes that there is a category of offences for which criminal proceedings may be initiated only following a complaint by the victim, who has the right in that case of supporting the accusation. These cases are dealt with by the court without preliminary investigation and inquiry, except when the prosecutor or the court deems such investigation to be necessary. Should the victim be a minor or incapable by virtue of physical or mental deficiency from defending his legal interests, proceedings may also be initiated following a complaint from his legal representative (Code of Criminal Procedure, article 115).

158. Also included in this category are offences covered by the first part of article 116 of the Criminal Code - "Beating and Torture". However, should a case be of particular public importance or should the victim be incapable of protecting his legal interests through circumstances of dependence on the accused or for other reasons, the prosecutor shall be entitled to initiated proceedings even in the absence of a complaint (Code of Criminal Procedure, article 115).

159. In the case of the death of the victim the proceedings are halted. However, when there is a need to protect the interests of the State, the public interest or the rights of individual citizens, the court continues hearing the case on general grounds, and informs the prosecutor of that fact (*ibid.*).

160. The prosecutor examines the legality of the bringing of criminal proceedings. Should a refusal to bring criminal proceedings following a complaint be unfounded, the prosecutor disaffirms the decision of the investigator or inquiring agency by his own decision and brings criminal proceedings. Should the refusal by a court to bring proceedings be unfounded, the prosecutor will appeal in accordance with the established procedure (Code of Criminal Procedure, article 116).

161. In addition to the agencies empowered to conduct an inquiry into a complaint concerning the use of torture in accordance with the Code of Criminal Procedure (see the commentaries on article 11 of the Convention in this report), the Committee for Human Rights and Relations between Peoples takes up such cases falling within its competence. While that Committee is not empowered to conduct an independent inquiry, it does verify the grounds of a complaint received and hands it over to the competent agencies for consideration of its essence, while usually continuing to follow the course of the proceedings.

162. As noted above, an inquiry may be initiated only if criminal proceedings are brought (Code of Criminal Procedure, article 3). The following are circumstances ruling out criminal proceedings applicable to the requirements of this article of the Convention:

(a) lack of a *corpus delicti*;

(b) absence of the event of a crime;

(c) expiry of the statute of limitations;

(d) an act of amnesty, should it set aside use of the punishment for the act committed, and also the pardoning of individuals;

(e) reconciliation between victim and accused - only for cases brought arising from complaints by victims;

(f) lack of a complaint from the accused - in the situation referred to under (e) above;

(g) death of the suspect;

(h) existence of a sentence for the same charge to which legal effect has been given or decision of a court to abandon the case on the same grounds;

(i) an unrescinded decision of an inquiring agency, investigator or prosecutor to abandon a case concerning the same charge against the person concerned (Code of Criminal Procedure, article 5).

163. Appeal against a decision by the competent authorities is, in general, made through a court.

Article 14

164. The legislative system of Georgia during the Soviet period did not make provision for compensation for a victim of the arbitrariness of representatives of the authorities. The very concept of "compensation" is associated in the

Code of Criminal Procedure exclusively with damages and is purely concerned with property. The deep-rooted causes of this should be sought in the very ideology propagated in the former USSR, which presupposed the unconditional primacy of the State and its interests over the individually considered person and his interests and rights. In the "developed socialist" State the individual had clearly regulated and strictly observable obligations, while the rights embodied in all enforceable enactments were frequently of a pretentious nature. It was considered, *a priori*, that the State and, consequently, the officials carrying out its policy exclusively acted, as was proclaimed at all levels, "for and on behalf of the people". There could be no question of the State, in the person of its officials, having made a mistake and, even less, of having harmed an individual. Consequently, legislative acts could not lay it down that an individual could become the victim of the arbitrariness of authority (in the broad sense) and could, therefore, seek adequate compensation and/or rehabilitation. The citizen did, theoretically, retain the possibility of recourse to the court, but the prospect of taking on the State itself through a body that did not satisfy such requirements of judicial bodies as independence and impartiality was a hopeless one.

165. The first very important step towards adequate protection of the interests of citizens against arbitrary behaviour was taken with the adoption of the new Georgian Constitution, which provides, in particular:

(a) guarantees for full compensation in a legal manner from the resources of the State for any person illegally caused harm by State agencies, local government authorities and their employees (article 42, paragraph 9);

(b) the right of an illegally detained or arrested person to receive compensation (article 18, paragraph 7).

166. In the course of the reform being carried out in Georgia these provisions of the Constitution will be strengthened and developed in appropriate enforceable enactments that will also provide the machinery for their implementation.

Article 15

167. There are several articles in the Georgian Constitution that have a bearing on the requirements of article 15 of the Convention. The following are of key significance:

168. Proof (circumstantial evidence) obtained by means that break the law has no legal force. No one may be obliged to give evidence against himself or against close relatives, the circle of whom is laid down by law (article 42, paragraphs 7,8).

169. Under the provisions of article 40 of the Constitution, a person is regarded as innocent until proved guilty in the legally established manner as confirmed by the guilty verdict of a court. No one may be obliged to prove his innocence; the burden of proof of guilt lies with the prosecutor (paragraphs 1 and 2).

170. Similar principles are embodied in the Georgian Code of Criminal Procedure: "No one may be proceeded against other than on grounds and in the

manner laid down by law" (article 4); no one may be found guilty of a crime or punished other than by sentence of a court and in accordance with the law" (article 11). It may nevertheless be said that the provisions of the Constitution are an important step forward as regards real assertion of the principle of the presumption of innocence as one of the principles of the Georgian legal system.

171. The general principles governing the submission of evidence in court and the extent of its admissibility are set out in the Code of Criminal Procedure (chapter six, articles 59, 61-69, 74, 78). It provides, in particular, that:

(a) evidence in a criminal case is any factual information on the grounds of which an inquiring agency, an investigator and a court establish the existence or otherwise of an act constituting a threat to the public, the guilt of the perpetrator of that act, etc.;

(b) all the evidence assembled concerning a case is subjected to thorough, comprehensive and objective verification by the inquirer, the investigator, the prosecutor and the court;

(c) no evidence has predetermined force for the court, the prosecutor, the investigator or the inquirer;

(d) the defence lawyer of the accused may not be questioned as a witness, nor may a person who is unable by virtue of physical or mental deficiency properly to appreciate events of importance to the case and to give proper testimony concerning them;

(e) information given by a witness shall be inadmissible if the witness is unable to give its source;

(f) information given by the victim shall be inadmissible as evidence if the victim is unable to give its source;

(g) no restriction shall be placed on the right of a suspect and an accused person to give evidence concerning the bringing of the indictment;

(h) the conclusions of experts concerning a case may not go beyond the limits of their expert knowledge;

(i) the records of investigative and judicial acts are evidence concerning a criminal case only if they have been drawn up in the manner provided by this Code (articles 96, 100).

172. The country's Criminal Code provides adequately severe penalties for coercion to give evidence by threat, violence or other illegal acts on the part of the individual conducting an inquiry or preliminary investigation. Under article 195, a person guilty of an offence of this kind is threatened with punishment taking the form of deprivation of liberty for a period of from 3 to 10 years. Moreover, the provision refers not only to a suspect or accused person but also to experts (coercion to give a conclusion) and translators (compulsion to give an incorrect translation). Consequently, it follows objectively from the provisions of the aforesaid article of the Criminal code

that evidence, statements etc. obtained as a result of any forms of coercion cannot be admissible as evidence for a court.

173. It should be that noted that the Georgian judicial system does not admit of any limitation on the right of any individual wheresoever he may be to recognition of his legal personality:

- "No one shall be liable shall be liable for an act, which was not regarded as illegal at the time when it was carried out. The law, while not mitigating and eliminating liability, shall not be retroactive" (Constitution, article 42, paragraph 5);

- "The criminal nature and punishability of an act shall be determined by the law in force at the time when the act was carried out. A law that makes an act no longer punishable or that mitigates the punishment shall be retroactive. A law that establishes the punishability of an act or increases the punishment shall not be retroactive". (Criminal Code, article 7).

174. The two provisions cited above exclude the possibility of the retroactive effect of a law as regard punishment or the increasing of punishment, which is also in line with the requirements of the Convention.

Article 16

175. As is evident from the content of this report, arbitrary acts that do not amount to "torture" as defined in article 1 of the Convention, when such acts are committed by a person acting in an official capacity, are treated as common crimes. Further to what has been said, it also seems essential to cite the content of two further articles from Georgian criminal legislation. The exceeding of authority or of office is punishable, if accompanied by force or the use of a weapon, or by degrading acts, by deprivation of liberty for from 2 to 8 years (Criminal Code, article 187, part III). Abuse of authority or office that has resulted in harm, especially to the rights and legal interests of individual citizens, is also punishable by deprivation of liberty (*ibid.*, article 186, part I).

III. CONCLUSIONS

176. A number of important events took place in Georgian public and political life during the time when this report was being prepared. The Georgian Parliament adopted the new Constitution, which came into force and became the legal basis for the building of a genuinely democratic civil society. Presidential and parliamentary elections were held and were acknowledged by international observers to be correct and democratic. Eduard Shevardnadze, whose unswerving support as a human being and a politician for the principles of democracy are widely known to and acknowledged by the international community, received an absolute majority of the votes cast and became President of Georgia. Further confirmation that the approach followed by the President is widely supported by the population at large is provided by the fact that a majority of the seats in the newly elected parliament were won by the Georgian Citizens' League - a political organization, the founder and leader of which is E. Shevardnadze.

177. The designation in the Constitution of a new institution, the Peoples' Defender for Human Rights, invested with wide powers, is a fundamental step towards assertion of the supremacy of the law and the primacy of human rights in Georgian society. The appropriate constitutional law is currently in preparation, and when it has been adopted by Parliament and the Peoples' Defender has been chosen, that institution will become an effective instrument in the sphere of compliance with and protection of human rights and freedoms.

178. Reform of the law, which is proceeding apace in Georgia, has the aim of bringing the country's legislative basis into line with international standards and with the requirements of those international agreements to which Georgia is a State party.

179. Everything that has been said, taken in conjunction with other positive processes under way in the Republic, gives us grounds for looking to the future with optimism, confident that Georgia has set out firmly along the path of democratic development and the building of a socially oriented society, with at its centre man, and human rights and freedoms.

List of annexed documents*

1. The 1995 Georgian Constitution.

2. Law No. 127 on the legal status of foreigners.

3. Law No. 66 on Georgian citizenship.

4. Decree No. 335, dated 4 October 1994, of the Georgian Head of State "On some measures to ensure protection of human rights in Georgia".

5. Conclusions on the results of an investigation carried out by the Georgian Attorney-General on evidence of genocide and ethnic cleansing of inhabitants of Abkhazia by aggressive separatists in the Abkhazian region of Georgia.

---

* These annexes are available for consultation in the archives of the United Nations Centre for Human Rights.